

[REDACTED]

Date: **MAR 24 1992**

Person to Contact:
[REDACTED]

Contact Telephone Number:
[REDACTED]

Refer Reply to:
[REDACTED]

CERTIFIED MAIL

Dear Applicant:

We have considered your application for tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

The evidence presented disclosed that you were incorporated on [REDACTED] in the State of [REDACTED].

The purposes for which the corporation was formed are as follows: "to buy food and grocery supplies as a non-profit cooperative."

The provisions for disposition of the corporate assets in the event of dissolution are:

"that the corporate assets would be given to another food oriented non-profit organization."

The financial data submitted with the application shows that the primary source of income will be from the sale of food to members. The primary expenses will be for food purchases, and equity funding in cooperatives that sell the food supplies.

The information submitted with your Application Form 1023 indicates that your primary activity consists of the operation of a cooperative formed to purchase food for its members at less than retail cost. The organization purchases food for its members at less than retail cost by making bulk purchases. The food is marked up only to cover the cost of preparing it for distribution. The distribution cost is for bags, wrapping paper, and labels.

The organization currently has [REDACTED] members. Members must be able to abide by the rules and work commitment requirements to maintain membership. Anyone may join the organization, provided there is an opening. New members are referred by either a current member or a by one of the two suppliers that your organization purchases food from; [REDACTED] and [REDACTED]. [REDACTED] provides equity funding or member share money to both suppliers. You have stated that your organization is a voting member of each of the aforementioned suppliers.

The organization stated that its only benefit is to members in the form of savings on food costs.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

In order to qualify under IRC 501(c)(3), an organization must be both "organized" and "operated" exclusively for one or more purposes specified in that section. If the organization fails to meet either the organizational test or the operational test, it is not exempt. (Regs. 1.501(c)(3)-1(a)(1)). The organizational test relates to the rules for governing an organization and the purposes stated in its articles of organization. The operational test relates to the organization's activities.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that if more than an insubstantial part of an organization's activities is not in furtherance of exempt purposes, the organization will not be regarded as exempt.

In Better Business Bureau v. U.S., 326 U.S. 279 (1945), the Supreme Court stated that the presence of even a single, non-exempt purpose, if more than insubstantial in nature, will defeat exemption under Section 501(c)(3) of the Code, regardless of the manner or importance of the truly exempt purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides, in part, that an organization is not organized or operated exclusively for one or more of the purposes mentioned in section 501(c)(3) of the Code unless it serves a public rather than a private interest. An organization may not be exempt if it is operated for the benefit of private individuals.

Section 1.501(c)(3)-1(d)(2) of the Regulations provides that the term "charitable" includes relief of the poor and distressed, advancement of education and science and the promotion of social welfare designed to accomplish any of the above purposes.

Section 1.501(c)(3)-1(b)(4) of the Regulations states that "an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders."

Revenue Ruling 69-175, 1969 - 1 C.B. 149 holds that an organization, formed by school bus transportation for its members' children serves a private rather than a public interest. The Revenue Ruling concluded that when a group of individuals associate to provide a cooperative service for themselves, they are serving the private interest of the members of the organization. Therefore, the organization does not qualify for exemption under 501(c)(3) of the Code.

In Benedict Ginsberg and Adele W. Ginsberg v. Commissioner, 46 T.C. 47(1966), the court held that an organization formed to dredge a navigable waterway adjacent to the properties of its members was serving the private purposes of its members, and does not qualify for exemption under IRC 501(c)(3) of the Code.

Like the organization described in Revenue Ruling 69-175 and the court case of Benedict Ginsberg, the purchasing of food for members at less than retail costs are serving the private interests of its members. The general public does not benefit from the organization's activities. The activities are solely benefiting the [REDACTED] members of the food co-op. Based upon the above, we have determined that you are not operated exclusively for charitable or other exempt purposes as stated in section 501(c)(3) of the Code. You have also failed to meet the organizational test since your purposes and dissolution provisions are broader than those within the purview of section 501(c)(3) of the Code.

Accordingly, we conclude that you do not meet the requirements for exempt status under section 501(c)(3) of the Code and propose to deny your request for exemption under that section.

You are required to file a taxable return Form 1120 or 1041 with the District Director of Internal Revenue Service. Please send the return to the Internal Revenue Service, P.O. Box 1680, General Post Office, Brooklyn, NY 11202.

Contributions made to you are not deductible by the donors as charitable contributions as defined in section 170(c) of the Code.


If you do not agree with this determination, you may request a Conference with the Regional Director of Appeals by protesting in accordance with the enclosed instructions within 30 days.

Protests submitted which do not contain all the documentation stated in the instructions will be returned for completion.

If we do not hear from you within that time this determination will be considered final and the appropriate State Officials will be notified.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,

A solid black rectangular box used to redact the signature of the District Director.

District Director

Enclosure: Publication 892